IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
Criminal Writ Petition No.1407 of 2007

Shri Arif Amir Kapshikar — Petitioner
Vs.
Yashwant Sahakari Bank Ltd. & anr. — Respondents

Mr.Umesh Mankapure for petitioner.
Mr.S.K.Chinlikar for resp.no.1.
Mr.D.R.More, APP for State.

CORAM: B.H.MARLAPALLE, J.

August 16, 2007.

P.C.

. Heard Mr.Mankapure, the learned counsel for the petitioner.

. Rule. Respondent no.1 waives service. The learned APP appears for the State. By consent the petition is taken up for final hearing.

. The petitioner has been convicted for an offence punishable under Section 138 of the Negotiable Instruments Act, 1881 and has been sentenced to suffer RI for one year. In addition he has been directed to pay by way of compensation an amount of Rs.9 lakhs to the complainant under Section 357 of Cr.P.C. as per the order of conviction and

sentence dated 7/6/2007. This order has been challenged in Criminal Appeal No.81 of 2007 and the appeal is pending. An application at Exhibit 5 was submitted in the said Appeal for stay to the order of sentence and while allowing the said application by his order dated 4/7/2007 the learned Addl. Sessions Judge at Sangli has directed the appellant - petitioner to deposit an amount of Rs.5 lakhs before the learned Judicial Magistrate, First Class at Miraj during the pendency of the appeal and the order of sentence has been stayed under Section 389 of Cr.P.C.

. The appellant is aggrieved by the said order and Mr.Mankapure submitted that on merits he has a good case to succeed in the appeal and in any case the direction to deposit an amount of Rs.5 lakhs as against the compensation amount of Rs.9 lakhs is not in keeping with the law laid down by the Apex Court in the case of Dilip S. Dahanukar Vs. Kotak Mahindra Co. Ltd. & anr. **[2007 All MR (Cri) 1775 (S.C.)].**

. I have heard the learned counsel for the respective parties and I am satisfied that the complainant being a Bank dealing with public money,

it would be appropriate that an amount of Rs.2 lakhs is deposited by the appellant and he furnishes a solvent surety for an amount of Rs.1 lakh.

. Hence the petition is allowed partly and it is directed that the petitioner shall deposit an amount of Rs.2 lakhs within a period of eight weeks from today and furnish a solvent surety for an amount of Rs.1 lakh to the satisfaction of the Bank or the learned Judicial Magistrate First Class at Miraj, within the said period of eight weeks. The order dated 4/7/2007 passed by the learned Addl. Sessions Judge at Sangli stands modified accordingly.

. Hearing of the appeal is expedited.

. Rule is made absolute accordingly.

(B.H.MARL